IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 207 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 207 of 1991
NOTICE SERVED for Petitioner No. 1
MS MAUNA M BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 02/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal Ahmedabad Bench 'C' has raised and referred the following questions of law out of reference applications made by both the assessee and the revenue.

2. The following questions have been referred at the instance of the assessee :-

"At the instance of the assessee :

1. R.A. No.1089/Ahd/90

(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the disallowance is required to be made u/s.40(c) out of the remuneration paid to the Managing Director notwithstanding the fact that the same was reasonable having regard to the business requirements of the company ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the commission paid to the Managing Director was required to be included while computing the disallowance u/s.40(c)?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred in relation to issue of bonus shares was not allowable as a business expenditure ?

R.A. No.1090/Ahd/90

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that for the purpose of considering the disallowance u/s.40(c) the perquisite in respect of the accommodation given by the assessee to its Managing Director was includible on the basis of the actual expenditure incurred and not in accordance with the I.T. Rules, 1962 ?

(iv) Whether on the facts and in the circumstances of the case, the Appellate

Tribunal was right in law in holding that the liability in respect of the interest payment on the amount withdrawn from the Court cannot be considered to have accrued until the final order was passed by the Honourable High Court in the month of April, 1984 as such interest was payable only in the event of Union of India succeeds in the said appeal before the High Court "

3. Though the reference is made at the instance of the assessee, none is present on behalf of the applicant assessee. In the circumstances, the questions are left unanswered.

4. The following questions have been referred at the instance of the revenue :-

"At the instance of the Revenue :

RA No.1132/Ahd/90

"Whether, the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs.24,000/- made by the Income-tax Officer invoking the provisions of section 37(4) in respect of rent ?"

R.A. No.1133/Ahd/90

(i) Whether, the Appellate Tribunal is right in law and on facts in directing the Income-tax officer to allow technical service fees of Rs.57,700/- paid to Mettur Beardshell Ltd. treating it as revenue expenditure ?

(ii) Whether, the payments on account of medical benefits to the Managing Director and personal accident insurance premium were liable to be included while calculating the disallowance u/s.40(c)/40A(5) of the I.T. Act, 1961 and whether the Tribunal was right in directing that the value of perquisites to determine under the I.T. Rules instead of actual expenditure incurred on providing the perquisites in determining the remuneration u/s.40A(5)/40(c) of the

I.T. Act ?"

5. Ms.Mauna M. Bhatt, learned Standing Counsel appearing on behalf of the applicant - revenue has very fairly stated that all the aforesaid questions stand answered against the revenue by a decision of this Court in assessee's own case.

6. In light of the aforesaid statement, it is not necessary to narrate the facts and set out the contentions in detail. For the reasons stated in assessee's own case reported in 256 ITR 528, all the three questions, referred at the instance of the revenue, are answered in favour of the assessee and against the revenue.

7. The Reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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'Bhavesh'